

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

WERNER ENTERPRISES, INC.,

Defendant;

and

ANDREW DEUSCHLE,

Plaintiff Intervenor,

v.

WERNER ENTERPRISES, INC.,

Defendant.

CASE NO: 8:18CV329

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

DRIVERS MANAGEMENT, LLC and
WERNER ENTERPRISES, INC.,

Defendants.

CASE NO: 8:18CV462

**DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

COME NOW Defendants Werner Enterprises, Inc. and Drivers Management, LLC (collectively, "Werner"), by and through their attorneys and, pursuant to Fed. R. Civ. P. 56 and Local Civil Rule 56.1, and move for an Order granting summary judgment in Werner's favor on all claims alleged by Plaintiffs in these consolidated cases. In support of this Motion, Werner submits to the Court as follows:

1. There is no genuine dispute as to any material fact and Werner is entitled to judgment as a matter of law on Plaintiff EEOC's Count I and Plaintiff Intervenor Deuschle's Counts I and II for discrimination under the ADA because the undisputed facts confirm that Victor Robinson and Andrew Deuschle were not "qualified individuals" under the ADA.

2. There is also no genuine dispute as to any material fact and Werner is entitled to judgment as a matter of law on Plaintiff EEOC's Count I and Plaintiff Intervenor Deuschle's Counts I and II for discrimination under the ADA because Deuschle and Robinson could not perform the essential functions of the job, with or without a reasonable accommodation.

3. Werner is also entitled to judgment as a matter of law on Plaintiff EEOC's Count I and Plaintiff Intervenor Deuschle's Counts I and II because Robinson and Deuschle would present a direct threat during the observed, over-the-road portion of Werner's Placement Driver Program.

4. Werner is also entitled to judgment as a matter of law on Plaintiff EEOC's Count I and Plaintiff Intervenor Deuschle's Counts I and II because successful completion of Werner's Placement Driver Program is job-related and consistent with a business necessity, and there was no reasonable accommodation available that would enable Robinson and Deuschle to safely complete the essential functions of the job.

5. There is no genuine dispute as to any material fact and Werner is entitled to summary judgment on Plaintiff EEOC's Count II because the EEOC's Count II is time-barred and there is no threat of recurrence as required to warrant injunctive relief.

6. There is no genuine dispute as to any material fact and Werner is entitled to judgment as a matter of law on Plaintiff EEOC's Count III because the training document at issue in Count III did not facially violate the ADA and did not unlawfully classify applicants "because of a disability." In addition, the procedures set forth in the training document were "required or necessitated by another Federal law or regulation," because the Federal Motor Carrier Safety Regulations ("FMCSRs") prohibit a motor carrier, such as Werner, from allowing a person to drive if that person does not meet the required standards under the FMCSRs. 29 C.F.R. § 1630.15(e); 49 C.F.R. § 391.11; 49 C.F.R. § 391.41(b)(11); 49 C.F.R. § 391.11(b)(2). Therefore, there is no liability under the ADA as a matter of law. 29 C.F.R. § 1630.15(e).

7. In further support of this Motion, Werner is submitting a Brief and Index of Evidence contemporaneously with the filing of this Motion.

WHEREFORE Werner prays for an Order granting summary judgment in Werner's favor on all claims alleged by Plaintiffs in these consolidated cases.

DATED this 23rd day of September, 2022.

WERNER ENTERPRISES, INC. and
DRIVERS MANAGEMENT, LLC,
Defendants.

BY: /s/ Elizabeth A. Culhane
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DRIVERS MANAGEMENT, LLC,
Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States District Court for the District Court of Nebraska using the CM/ECF system on this 23rd day of September, 2022, which system sent notification of all parties' counsel of record.

/s/ Elizabeth A. Culhane

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